IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.256 OF 2007

Shri Hillary D'Cruz. ...Petitioner.
Versus
1.The State of Maharashtra, &
2.The Wallace Flour Mills Co. Ltd., ...Respondents.

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Mr.V.A.Shastry, Adv. for the Petitioner.
Mr.S.R.Shinde, APP, for the State.
Mr.Sandeep S. Dadwal, Adv. i/b. Mr.Prakash Mahadik, Adv. for respondent No.2.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATE : 20th July, 2007.

ORAL ORDER :

1. Heard Mr.Shastry the learned Advocate for the petitioner, Mr.Dadwal the learned Advocate for respondent-company and Mr.Shinde the learned APP for the State.

2. By judgment and order dated 13.9.2005, the learned JMFC, Vadgaon convicted the petitioner under Section 630 of the Indian Companies Act, 1956 and sentenced him to pay fine. The petitioner was also directed to hand over the peaceful and vacant possession of the property as

described in the complaint and which is in his possession to the complainant-company on or before 31st December, 2005, in default of handing over the possession of the premises to the complainant company within the stipulated period the petitioner to suffer S.I. for two months.

3. Being aggrieved by the judgment and order of conviction recorded by the JMFC, the petitioner preferred Criminal Appeal No.361 of 2005 before the Additional Sessions Judge, Pune. The original complainant preferred Criminal Revision No.294 of 2006 for enhancement of the sentence. Both the matters were taken up together for hearing by the learned Sessions Judge and he disposed of the same by common judgment and order dated 31.5.2007. By the said judgment and order, the learned Sessions Judge dismissed the Appeal preferred by the present petitioner as well as the Revision Application preferred by the original complainant. The learned Additional Sessions Judge maintained the conviction and sentenced as imposed by the learned Magistrate however, he granted time till 11.6.2007 to the petitioner to deliver the vacant

possession of the quarters to the respondent company, in default the petitioner would be liable to undergo S.I. for two months as imposed by the learned Magistrate. Being aggrieved thereby, this Revision has been preferred by the petitioner-orig.accused.

4. The respondent No.2 is a Private Limited Company. It owned property i.e. bungalow at Lonawala. The petitioner was appointed as a caretaker and cook in the said bungalow in December, 1988. By letter dated 10.10.1990 the petitioner was provided residential quarter in the premises of the Company at Lonawala. By letter dated 15.10.1998 the services of the petitioner came to be terminated and the Company demanded vacant possession of the quarters from the petitioner. Vide said termination letter, the Company informed the petitioner that the bungalow was sold by it and therefore, his services were no more required and hence terminated. The petitioner was called upon to deliver vacant possession of the disputed quarter. As the petitioner did not hand over the vacant possession

of the quarters, a private complaint under Section 630 of the Companies Act came to be filed. After the evidence was led, in the said case, the trial Court held that the petitioner had wrongly withheld the residential quarter and thereby committed an offence under Section 630 of Indian Companies Act. The said order was confirmed by the Sessions Court.

5. It is not a matter of dispute that even today the petitioner is in possession of the said quarter. It is also not in dispute that the petitioner was appointed in 1988 as a cook and caretaker for the company bungalow at Lonawala. He was initially paid house rent allowances however thereafter on 10.10.1990 he was allotted the disputed quarter for his residence. Since then he was not paid HRA.

6. The respondent- Company has examined PW-1 Shri.Trivedi who is the complainant in the said case. He has filed complaint on behalf of the said Company. From his evidence, all the above facts have been brought on record including the

fact that the services of the petitioner came to be terminated by letter dated 15.10.1998 (Exh.66).

7. The short question involved in the present case is whether the petitioner wrongly withheld the possession of the residential quarter allotted to him by the respondent-company ? Both the Courts below have held that the petitioner wrongly withheld the possession of the residential quarter allotted to him by the company and he has thus committed an offence under Section 630 of the Indian Companies Act. It is the case of the respondent-company that services of the petitioner came to be terminated as the bungalow in question came to be sold. However, Mr.Shastry, the learned Advocate for the petitioner has submitted that if the property had been sold, the company no longer owned the said bungalow at Lonawala. As the rights in the said property had been transferred to another entity, the respondent company could not ask the petitioner to vacate the same. He submitted that the respondent-company had ceased to have any interest in the property by virtue of its sale to a third party and therefore, it had no

locus standi to demand vacant possession of the quarters allotted to the petitioner. As far as this aspect is concerned, it is an admitted fact that earlier the petitioner was paid H.R.A. by the respondent-company. Subsequently in lieu of H.R.A., the petitioner was allotted residential quarters and he and his family were permitted to reside in the said quarter as long as his employment in the company lasted. The question whether the company has sold the bungalow including the disputed quarter would fall in a different ambit. There cannot be any doubt that it is the prerogative of the company and it has exclusive rights to hold or dispose of its property. The petitioner as care taker and cook of a bungalow of the company admittedly has no say in the power of disposition of the property of the company. Even if his termination is finally set aside the petitioner could not claim a right of occupation of the quarter because his occupation was exclusively at the discretion of the company. It he was dispossessed he could claim permissible house rent or an alternative accommodation but it would be too much to say that his employment gave

the petitioner a right to challenge the power of the company to alienate its property. Once his service was terminated, the petitioner ceased to have the right to occupy the residential quarter allotted to him by the company. The right of the petitioner to occupy the quarter was not dependent on the ownership of the premises vesting in the respondent-company. The petitioner's right to occupy the premises depended upon his employment with the company. Presuming that the premises were sold, it did not put an end to the right of his company to terminate the services of the petitioner and demand vacant possession of the quarter. The petitioner could occupy the quarter not because the company owned the premises but because he was in its employment. Many a times, employer companies take quarters on rent and allot them to their employees. In such cases, the right of the employee to occupy the quarter subsists till his employment lasts or till he is terminated from his service.

8. Perusal of appointment letter (Exh.64) of the petitioner shows that the service of the

petitioner was liable to be transferred to any of the associate company or firm of the complainant at any place in India. Therefore, even by transfer the right of the petitioner to occupy the said quarter could have been brought to an end by the respondent-company. Therefore, the petitioner has no right of occupation of the disputed premises. Since it is proved that the services of the petitioner were terminated by letter dated 15.10.1998, it follows that possession of the petitioner over the quarter had become unauthorised. His right to occupy the quarter comes to an end with the termination of his services.

9. Mr.Shastry, the learned Advocate for the petitioner further submitted that PW-1 Trivedi was not the proprietor and legally constituted power of attorney of the respondent-company and hence he could not file the complaint on behalf of the company nor depose on behalf of the company. He submitted that hence evidence of Shri Trivedi cannot be relied upon by respondent-company. Mr.Shastry, further submitted that the Director of

the company is not examined and therefore adverse inference should be drawn against the respondent.

10. In the present case most of the facts are not disputed. The employment of the petitioner in the company, allotment of residential quarter to him and his termination of his service are undisputed facts. The only question to be determined is whether the petitioner illegally withheld possession of the residential quarter after termination. Thus the only element to be determined is whether any offence is made out. It is also not disputed that the property in question has been sold by the company. I find that only technical pleas have been raised by the petitioner. The evidence of PW-1 Shri.Trivedi shows that he has produced power of attorney. In his evidence Shri.Trivedi stated that a copy of the power of attorney is filed below the list Exh.3. PW-1 Shri.Trivedi submitted a notarised copy of the power of attorney and it is exhibited as Exh.70. After considering the exhibits and evidence of Shri.Trivedi the learned Sessions Judge has rightly held that Shri.Trivedi is duly

authorised under these documents to represent the company in every respect and to prosecute the company in the interest of the company. Thus, I find no merit in the submission made by the learned Advocate for the petitioner.

11. There is no doubt that residential quarter provided to the petitioner was belonging to the company. This is clear from the evidence of PW-1 Shri.Trivedi and the documents on record. It can be seen that the complainant has examined his power of attorney i.e. PW-1 Shri.Trivedi and has filed documents on record at Exhs.59 to 63 i.e. revenue records of the suit premises which show that the company is the owner of the said premises. It may also be stated here that before the learned Magistrate the petitioner has not disputed that the company was the owner of the premises occupied by the petitioner. This fact is evident from para-9 of the judgment of the learned Magistrate. It is seen that only now at this belated stage, suddenly the petitioner is stating clearly as an afterthought that the premises in question was not owned by the company. It may

also be stated that the petitioner has filed Regular Civil Suit No.139 of 1998 against the respondent-company stating that he was the tenant and seeking declaration and injunction restraining the company from his forcible dispossession from the suit premises. Both the Courts below have taken all these aspects into consideration and have rightly held that the petitioner is guilty of an offence under Section 630 of the Indian Companies Act.

12. Mr.Shastry, the learned Advocate for the petitioner placed reliance on the decision of the Supreme Court in the case of **Samrat Shipping Co.Pvt.Ltd. Vs. Dolly George: (2002) 9 S.C.C. 455**; wherein it was held that :-

> ".. A company can file a complaint only through human agency. The person who presented the complaint on behalf of the Company claimed that he is the authorised representative of the

> Company. Prima facie, the trial court should have accepted it at the time when a complaint was presented. If it is a matter of evidence when the accused disputed the authority of the said individual to present the complaint, opportunity should have been given to the complainant to prove the same, but that opportunity need be given only when the trial commences. The dismissal of the complaint at the threshold on the premise that the individual has not produced certified copy of the resolution appears to be too hasty an action. We, therefore, set aside the impugned orders and direct the trial court to proceed with the trial and dispose of it in accordance with law. .."

. The said case is under Section 138 of

N.I.Act. In the present case, from the evidence of PW-1 Shri Trivedi and the other evidence on record, I am of the opinion that PW-1 Trivedi is the authorised representative of the company. The facts in the said case and the present case being entirely different, the said decision can have no application to the facts of the present case.

13. On the other hand, the learned Advocate for the respondent-company has placed reliance on the decision of the Supreme Court in the case of **M.M.T.C. Ltd. and another Vs. Medchi Chemicals and Pharma (P) Ltd. and another: 2002 Company Cases (Vol.108) Page-48**. Mr.Dadwal, the learned Advocate for respondent-company has stated that the complaint was made by Shri Trivedi in the name of the company and hence the complaint was maintainable. In the case of **MMTC Ltd.** (supra), which case was under the N.I.Act, it was held that :

> "the criterion that the complaint must be filed by the payee was satisfied as the complaint was in

> the name of and on behalf of the company, and the complaint was maintainable. There may be occasions when different persons can represent the company. It is open to the de jure complainant, the company, to seek permission of the court to send another person to represent the company in court. Even presuming that initially there was no authority in the person who filed the complaint, the company can, at any stage, rectify that defect. At a subsequent stage, the company can send a person who was competent to represent the company."

. In the present case, the complaint was made by Shri.Trivedi in the name of and on behalf of the respondent-company, hence the complaint is very much maintainable.

14. Mr.Dadwal, rightly submitted that the petitioner has been unable to point out as to how there has been failure of justice on account of filing of the complaint by Shri Trivedi and hence the contention of Mr.Shastry that the complaint was filed by Shri Trivedi who was not authorised to depose on behalf of the company has no substance. Mr.Dadwal placed reliance on the decision of this Court in the case of **Manohar Gunaji Anubhawne Vs. State of Maharashtra & Anr.: 2003 ALL MR (Cri) 2138**. In the said case, it is observed as under :-

> ".. The observations made by the Supreme Court hold good, in this case also since nothing has been pleaded or pointed out as to how there has been failure of justice on account of filing of the complaint in the name of R.G. Ghag instead of the company. It cannot be ignored that possession

> of the room in question has been claimed not for the said R.G.Ghag but for the company itself to whom the said room belongs. There is, therefore, no substance in the first contention raised by Shri.Jamdar and the same is therefore, rejected."

. This decision would apply on all fours to the present case.

15. In the case of **Manohar Anubhawne** (supra) It is further observed as under :-

> ".. It is an undisputed fact that the petitioner was in the employment of the company and that in that capacity he was allotted the room in question for his residential purpose. There is also no dispute of the fact that the petitioner resigned from the

> service on 11.10.1988 and continued to hold possession of the room. As a matter of fact, he was under an obligation to vacate the room as soon as he ceased to be an employee of the company. Both the courts below have recorded a concurrent finding of fact that petitioner's occupation of the room after he ceased to be the company's employee, is unauthorised and wrongful. Therefore, the petitioner has prima facie no right to continue to hold possession of the suit room any longer."

. It is an undisputed fact that the present petitioner was in the employment of the respondent-company and hence in that capacity he was allotted the room in question for his residential purpose. There is also no dispute that the petitioner was terminated from service on

15.10.1998 and he continued to hold possession of the room. As a matter of fact, he was under an obligation to vacate the room as soon as he ceased to be an employee of the company.

16. In answer to Mr.Shastry's contention that the company had sold the premises and hence the company had no locus standi to demand vacant possession of the quarter from the petitioner. Mr.Dadwal submitted that under Section 630 of the Companies Act, the relevant aspect which has to be looked into is possession and not the title. He submitted that it is nobody's case that a third party was in possession of the premises and as the respondent-company was in possession of the premises, it could demand that vacant possession of the same be given to them. In support of this contention, he has placed reliance on the decision of this Court in the case of **Kannankandi Gopal Krishna Nair Vs. Prakash Chunder Juneja and another :1994 Company Cases (Vol.81) Page-104**; wherein it is observed as under :-

"Section 630 of the Companies Act does not concern itself with the aspect of title of property, but is exclusively confined to possession. It is in these circumstances, therefore, that the courts have consistently applied Section 630 of the Companies Act even in the cases of residential accommodation which admittedly does not belong to the company, but in respect of which the company is in exclusive possession. In other words, the right of user in respect of property, movable or immovable, which is conferred on an employee by virtue of his status as an officer or employee of the company and which gets extinguished on the cessation of the contract of service, cannot be extended and this provision of law prescribes a penalty in such

> cases where an attempt is made to wrongfully extend it and also empowers the court to ensure that possession is restored."

. This decision fully supports the contention of Mr.Dadwal.

17. Both the Courts below have considered the evidence on record. Both the courts below have recorded a concurrent finding of fact that petitioner’s occupation of the room after he ceased to be the company’s employee, is unauthorised and wrongful. Therefore, the petitioner has prima facie no right to continue to hold possession of the suit quarter any longer. The orders are legal, proper and correct. No interference is called for.

18. Revision Application is dismissed. Petitioner is granted period of four weeks from today to vacate the said premises. However, it is made clear that during the period of four weeks from today, the petitioner shall not create any

third party interest in respect of the suit premises.

(SMT.V.K.TAHILRAMANI,J.)